IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Crl.Rev.Pet.No. 695 of 2000()

CRA.267/1998 of ADDL.SESSIONS COURT-II, KOZHIKODE
CC.160/1995 of JUDL.MAGISTRATE OF FIRST CLASS, NADAPURAM

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REVN. PETITIONER:
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1. KOROTH GANGADHARAN MASTER, S/O.SANKARA KURUP, AGED 43/95, VALAYAM.

2. KUNHIKANNAN, S/O.ONAKKAN, AGED 41/90, VALAYAM AMSOM, KALLUNIRA.

3. AVALATHEENTAVIDA NANU, S/O.KUNHYEKKAN, AGED 38/94, VALAYAM AMSOM DESOM.

BY ADV. SRI.P.K.ASHOKAN

RESPONDENT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.3807/2000 IN CRL.R.P.NO.695/2000

CLOSED

SD/-K.R.UDAYABHANU, JUDGE

23/07/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.695 of 2000(A)

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Dated this the 23rd day of July, 2007

O R D E R

The revision petitioners stand convicted for the offences under Sections 324 and 326 I.P.C read with Section 34 of the I.P.C and sentenced to undergo rigorous imprisonment for one year each and to pay a fine of Rs.5000/- each and in default to undergo imprisonment for another three months each for the offence under Section 326 I.P.C read with Section 34 of the I.P.C. No separate sentence is awarded for the offence under Section 324 I.P.C. The revision petitioners are accused Nos. 1 to 3. The fourth accused died during the investigation.

2. The prosecution case is that on 24/10/1994 at 7.45 p.m., the accused in furtherance of their common intention attacked PW.1 with iron rods on the head, arm etc., at Valayam-Kuyineri public road near to Valayam Junction. The evidence adduced in the matter consisted of the testimony of PWs.1 to 10, Exts.P1 to P6.

3. PW.1, the injured has testified as to the incident in detail. It is his case that the accused chased him and beat him with iron rods and when he warded off one of the blows happened to land on his right finger and he sustained fracture to the metacarpel bone. PWs.2 and 3 are the occurrence witnesses who has supported the prosecution case. PWs.4 and 5 are the scene mahazar attestors. PW.6 is the attestor to the seizure mahazar of the blood stained dress of PW.1. PW.7 is the doctor, who recorded Ext.P4 certificate and PW.8 is the doctor of Medical College Hospital, who recorded the discharge certificate. The rest are the police officials, who recorded the F.I.R and conducted the investigation. As such no material contradictions with respect to the previous statement of the injured or the witnesses have been brought out. As per Ext.P4 wound certificate recorded by PW.7 the doctor of the P.H.C, the fracture has suspected. As per evidence of PW.8, the Lecturer in Surgery of Medical College Hospital, Kozhikode, who recorded Ext.P5 discharge certificate, there was a fracture on the fourth metacarpel of the right hand.

4. The contention of the counsel for the revision petitioners is based on the statement of PW.8 that it was not he who treated the injured and that he could not say as to the nature of the injury sustained. He has also mentioned that there is no corresponding external injury on the part of the body where the fracture has been sustained. There is no recovery of the material objects with which the alleged injuries were inflicted and further there is no specific averment as to which of the accused inflicted the blow on the hand.

5. In the circumstances as contended by the counsel for the revision petitioners, I find that conviction can only be under Section 325 I.P.C and not under Section 326 I.P.C. The evidence is convincing as to the prosecution allegation that it was the accused who inflicted injuries on PW.1. Hence, the conviction is confirmed but the offence is altered to one under Section 325 I.P.C read with Section 34 of the I.P.C.

6. The counsel for the revision petitioners pointed out that the incident was occasioned on account of political enmity about 13

years ago and that the first accused is about to retire from service and he has pleaded for avoiding imprisonment.

In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.15,000/- each to PW.1 and in default to undergo simple imprisonment for three months each. Three months time is granted to the revision petitioners to deposit the compensation amount. The accused shall appear before the Judicial Magistrate of the First Class, Nadapuram, on 29/10/2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.695 of 2000

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O R D E R

23rd July, 2007